

MARCELO MUTO, NOAH BREEZE,
and all others similarly situated,

Plaintiffs,

v.
FENIX INTERNATIONAL LIMITED;
FENIX INTERNET LLC,

Defendants.

CASE NO. 5:22-cv-02164-SSS-KK

**DECLARATION OF LEE TAYLOR
IN SUPPORT OF DEFENDANTS
FENIX INTERNATIONAL LIMITED
AND FENIX INTERNET LLC'S
MOTION TO DISMISS (REDACTED)**

Judge: Hon. Sunshine S. Sykes

I, Lee Taylor, declare and state as follows:

1. I am a Director of Fenix International Limited ("FIL"), the sole member of Fenix Internet LLC ("Fenix Internet"). I have been in that position since December 2021. In this role, I oversee the finances of FIL and its subsidiaries, including Fenix Internet.

2. I make this declaration based on my personal knowledge and/or knowledge acquired through reasonable investigation. In preparation of this Declaration, I reviewed certain of FIL's internal records related to the registration of OnlyFans accounts and account activity of the Plaintiffs, which were created and maintained in the course of regularly-conducted business. I could competently testify to the matters set forth herein if called to do so as a witness in court.

3. FIL is incorporated and registered in England and Wales, with its headquarters in London. FIL owns and operates OnlyFans.

1 4. Fenix Internet is a Delaware limited liability company, with its principal
2 place of business at 501 Silverside Road, Suite 87AXK, Wilmington, Delaware, 19809.

3 5. Fenix Internet does not operate OnlyFans. Fenix Internet does not have or
4 pay for servers of its own, does not own any intellectual property or trademarks related
5 to OnlyFans, and is not responsible for the day-to-day operations of OnlyFans.

6 6. Fenix Internet's purpose is to perform payment and administrative support
7 services for FIL, the operator of OnlyFans. In this role, Fenix Internet facilitates some
8 of the payments between users/subscribers ("Fans") and content creators ("Creators").
9 Specifically, at FIL's direction, Fenix Internet collects from third-party processors
10 payments made by Fans and distributes the money it collects through other third-party
11 processors to Creators in the United States.

12 7. Fenix Internet's sole responsibility is to perform payment processing and
13 administrative support services for FIL.

14 8. Neither FIL nor Fenix Internet has any offices or employees in California.

15 9. Neither FIL nor Fenix Internet engages in marketing, sales, or commercial
16 activity targeted specifically at California residents.

17 10. Neither FIL nor Fenix Internet engages in any marketing, sales or
18 commercial activity in California related to the allegations in the Second Amended
19 Complaint.

20 11. Neither FIL nor Fenix Internet has paid any taxes to the California
21 Franchise Tax Board and/or the California Department of Tax and Fee Administration.

12. Neither FIL nor Fenix Internet is registered to do business in California.

Neither FIL nor Fenix Internet has a registered agent for service of process in California.

13. I have been informed that a search of the California Secretary of State website returns a company named “Fenix Internet LLC” that was formed in California. That company has no relationship to OnlyFans, FIL, or the Fenix Internet LLC named in the Second Amended Complaint.

8 14. FIL's Terms of Service govern the legal relationship between OnlyFans
9 and Creators and Fans that use OnlyFans. Anyone who is a Creator or Fan on OnlyFans
10 has agreed to the Terms of Service. As set forth in the Terms of Service, by registering
11 with and using OnlyFans, all Creators and Fans have accepted and agreed to be bound
12 by and abide by the Terms of Service.

13 15. At all times, the Terms of Service have been posted in their entirety and
14 are readily available on OnlyFans.

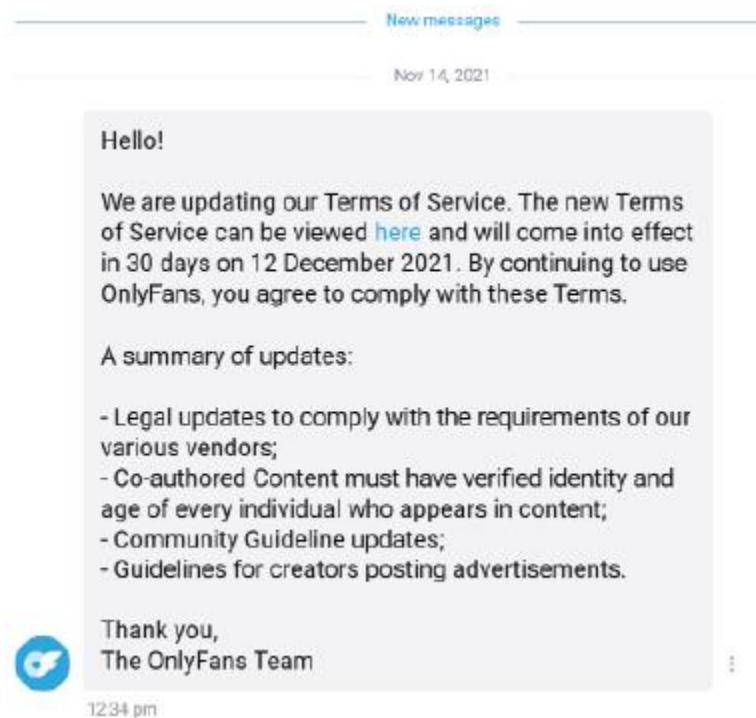
15 16. Based on a review of FIL's data and records, Plaintiff Marcelo Muto
16 joined OnlyFans as a Fan on December 12, 2019, as User No. 16405711 and using the
17 name "Fucker." A true and correct copy of the Terms of Service that were posted on
18 OnlyFans and in effect on December 12, 2019, is attached hereto as Exhibit A.

17. Based on a review of FIL's data and records, Plaintiff Noah Breeze joined
OnlyFans as a Fan on February 10, 2020, as User No. 21003986 and using the name
"Mrbigdick666." The Terms of Service attached hereto as Exhibit A continued to be
posted on OnlyFans and remained in effect when Mr. Breeze joined on February 10,
2020. Mr. Breeze subsequently was approved for a Creator account on March 30, 2020.

1 18. Pursuant to the express language in the Terms of Service attached hereto as
2 Exhibit A, FIL reserves the right to make changes to the Terms of Service at any time
3 and in its sole discretion. Accordingly, the Terms of Service have been amended over
4 time.

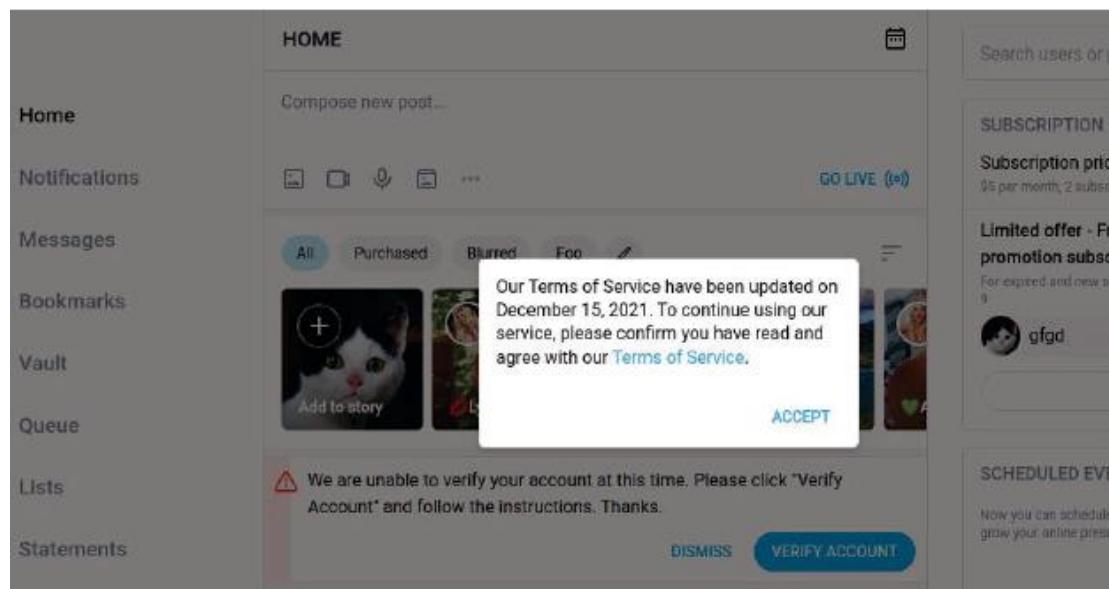
5 19. The last amendment to the Terms of Service was made on December 15,
6 2021. A true and correct copy of the Terms of Service as amended on December 15,
7 2021, is attached as Exhibit B. These Terms of Service were in effect when Plaintiffs'
8 Complaint, First Amended Complaint, and Second Amended Complaint were filed.

9 20. To inform users about that amendment, on November 14, 2021, OnlyFans
10 sent all users the following message:



21 21. In addition to the above message, the first time OnlyFans users logged into
22 their OnlyFans account on or after December 15, 2021, they were presented with the
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1 following alert, which would have occurred immediately after logging into their
2 account:



11 22. After being presented with the above alert, an OnlyFans user—including
12 the Plaintiffs—would have been unable to continue using the OnlyFans website unless
13 they clicked “ACCEPT.” Had a user clicked on the blue hyperlinked words “Terms of
14 Service” shown in the above image, he or she would have been taken to a full copy of
15 the Terms of Service containing the December 15, 2021, amendments.
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17 23. Mr. Muto accepted the December 15, 2021, amendments on December 25,
18 2021, at 09:16 a.m. (GMT). A true and correct copy of a screenshot from OnlyFans'
19 administrative system showing when Mr. Muto (OnlyFans name “Fucker”) logged on
20 and accepted the December 15, 2021 amendments is attached hereto as Exhibit C.

21 24. Mr. Breeze accepted the December 15, 2021, amendments on December
22 21, 2021, at 10:21 p.m. (GMT). A true and correct copy of a screenshot from
23 OnlyFans' administrative system showing when Mr. Breeze (OnlyFans name
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1 “Mrbigdick666”) logged on and accepted the December 15, 2021, amendments is
2 attached hereto as Exhibit D.

3 25. Plaintiffs each continued to use OnlyFans after accepting the December
4 15, 2021, amendments to the Terms of Service.

5 26. Because OnlyFans is an international content-sharing social media
6 platform with millions of participants located around the world, it is concerned that the
7 Terms of Service are uniformly and authoritatively enforced as to all of its Creators and
8 Fans. As a result, the Terms of Service have always included a forum selection clause
9 requiring that any dispute concerning OnlyFans between FIL and the millions of
10 Creators and Fans participating on the OnlyFans website and related services must be
11 resolved in the courts of England and Wales.

12 27. The Terms of Service that Plaintiffs agreed to and that existed throughout
13 the time they were users included a forum-selection clause requiring any dispute
14 concerning OnlyFans brought by one of its users to be resolved in the courts of England
15 and Wales.

16 28. FIL and Fenix Internet agree to stipulate to personal jurisdiction and
17 service in England and Wales if Plaintiffs voluntarily pursue this suit in the courts of
18 England and Wales.

19 29. FIL and Fenix Internet agree to toll any applicable statutes of limitation
20 from the date that Plaintiffs first filed this action for a period of 180 days after
21 dismissal.

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1 **Plaintiffs' Subscription Activity on OnlyFans**

2 30. Mr. Muto alleges that he subscribed to follow the account of OnlyFans
3 Creator, “@tasteofheaven,” in February 2021. He further alleges that he was charged a
4 \$29.99 subscription renewal fee on or about March 14, 2021.

5 31. A true and accurate copy of Mr. Muto’s transaction history as of October
6 23, 2022 (under his OnlyFans name “Fucker”) is attached hereto as Exhibit E.

7 32. Mr. Muto’s transaction history shows that prior to subscribing to follow
8 OnlyFans Creator, @tasteofheaven, in February 2021, Mr. Muto subscribed to and
9 disabled renewal for 22 subscriptions to other OnlyFans Creators prior to the
10 subscription renewal date.

11 33. These 22 subscriptions, and the dates and times (all in GMT) when Mr.
12 Muto subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.	[REDACTED]	12/12/2019 14:56	12/12/2019 18:08
2.	[REDACTED]	3/18/2020 19:51	3/18/2020 20:01
3.	[REDACTED]	4/15/2020 14:38	4/15/2020 15:07
4.	[REDACTED]	4/19/2020 14:34	4/19/2020 14:36 (listed twice)
5.	[REDACTED]	5/22/2020 13:28	5/22/2020 13:35
6.	[REDACTED]	7/12/2020 14:29	7/14/2020 5:59
7.	[REDACTED]	7/12/2020 22:10	7/14/2020 5:59
8.	[REDACTED]	7/20/2020 7:02	8/5/2020 22:06
9.	[REDACTED]	8/5/2020 22:07	8/5/2020 22:09

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
10.	[REDACTED]	8/12/2020 14:02	8/14/2020 14:43
11.	[REDACTED]	8/16/2020 17:42	8/16/2020 20:06
12.	[REDACTED]	9/11/2020 20:45	9/11/2020 20:46
13.	[REDACTED]	10/19/2020 13:02	10/19/2020 13:02
14.	[REDACTED]	11/8/2020 8:55	11/8/2020 8:55
15.	[REDACTED]	11/14/2020 0:44	11/14/2020 0:44
16.	[REDACTED] [REDACTED] [REDACTED]	12/11/2020 2:46	12/11/2020 2:46
17.	[REDACTED]	12/15/2020 6:59	12/15/2020 6:59
18.	[REDACTED]	1/2/2021 11:42	1/2/2021 11:51
19.	[REDACTED]	1/17/2021 4:26	1/17/2021 4:26
20.	[REDACTED]	1/17/2021 9:40	1/17/2021 9:40
21.	[REDACTED]	1/19/2021 14:16	1/19/2021 14:16
22.	[REDACTED]	1/29/2021 9:21	1/29/2021 9:22

34. In addition, after Mr. Muto subscribed to @tasteofheaven, he proceeded to subscribe to and disable renewal for 8 more subscriptions prior to the subscription renewal date.

35. These 8 subscriptions, and the dates and times (all in GMT) when Mr. Muto subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1	[REDACTED]	2/22/2021 3:39	2/22/2021 3:39
2	[REDACTED]	3/11/2021 13:06	3/11/2021 13:06
3	[REDACTED]	3/22/2021 1:54	3/22/2021 1:55
4	[REDACTED]	3/23/2021 18:02	3/23/2021 18:02
5	[REDACTED]	3/25/2021 14:29	3/25/2021 14:30
6	[REDACTED]	3/25/2021 14:34	3/25/2021 14:34
7	[REDACTED]	3/29/2021 20:43	3/29/2021 20:44
8	[REDACTED]	4/3/2021 14:01	4/3/2021 14:01

36. Mr. Breeze alleges he subscribed to follow the account of OnlyFans Creator called “@cheriedeville.” He further alleges that he was charged a \$14.99 subscription renewal fee on or about January 24, 2022.

37. A true and accurate copy of Mr. Breeze’s transaction history as of January 9, 2023 (under his OnlyFans name “Mrbigdick666”), is attached hereto as Exhibit E.

38. Mr. Breeze’s transaction history shows that he first subscribed to OnlyFans creator, “Cherie Deville,” on August 26, 2020. Mr. Breeze’s transaction history also shows that Mr. Breeze’s subscription to “Cherie Deville” renewed on September 26, 2020. Mr. Breeze’s transaction history shows that Mr. Breeze elected to disable renewal for his subscription to Cherie Deville on October 4, 2020. Mr. Breeze’s transaction history shows that on November 24, 2021, Mr. Breeze re-subscribed to Cherie Deville and that on December 24, 2021, the subscription renewed. Mr. Breeze’s transaction history then shows that the subscription renewed again on January 24, 2022.

1 39. Mr. Breeze's transaction history also shows that prior to subscribing to
2 Cherie Deville on August 26, 2020, Mr. Breeze subscribed to and disabled renewal for
3 subscriptions to 3 other OnlyFans Creators prior to the subscription renewal date.

4 40. These 3 subscriptions, and the dates and times (all in GMT) when Mr.
5 Breeze subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.	[REDACTED]	3/26/2020 8:07	3/27/2020 5:48
2.	[REDACTED]	3/27/2020 5:47	3/27/2020 5:47
3.	[REDACTED]	6/11/2020 16:53	6/11/2020 17:05

11 41. In addition, after subscribing to Cherie Deville August 26, 2020, Mr.
12 Breeze subscribed to and disabled renewal for 5 other subscriptions to OnlyFans
13 Creators prior to the subscription renewal date.

14 42. These 5 subscriptions, and the dates and times (all in GMT) when Mr.
15 Breeze subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.	[REDACTED]	9/7/2020 0:17	9/7/2020 0:32
2.	[REDACTED]	9/7/2020 5:30	10/4/2020 21:42
3.	[REDACTED]	2/27/2021 12:09	2/27/2021 12:25
4.	[REDACTED]	3/3/2021 10:54	3/3/2021 10:56
5.	[REDACTED]	3/22/2021 9:55	3/27/2021 18:25

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct. Executed March 10, 2023.
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Lee Taylor